

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

Number: **201306019**

Release Date: 2/8/2013

CC:PSI:7:
POSTN-143596-12

Third Party Communication: None
Date of Communication: Not Applicable

UILC: 4051.00-00, 4052.00-00

date: January 07, 2013

to: Chief, Excise Tax Program
Holly L. McCann

from: Branch Chief, CC:PSI:7
Frank Boland

subject: Section 4051: Chassis Renovation

This responds to your request for Non-Taxpayer Specific Legal Advice regarding the application of the tax imposed by § 4051 of the Internal Revenue Code to two scenarios in which a glider kit is used to renovate a truck chassis. This advice may not be used or cited as precedent.

Situation 1

The owner (Owner) of a used highway truck chassis, the first retail sale of which was taxed under § 4051(a)(1)(A) when it was sold to Owner, delivers the chassis to an unrelated heavy truck dealer (Dealer) for renovation. Owner keeps title to the chassis and will continue to use the chassis in its business when the Dealer returns the chassis. When the renovations are complete, the chassis will remain a chassis that is subject to the § 4051 tax. Owner does not regularly sell chassis at retail in arm's length transactions.

In renovating the chassis, Dealer does the following:

- Incorporates into the renovated chassis the rear axle assembly valued at \$5,000.
- Removes the chassis' engine and sends it to an engine remanufacturer. The engine remanufacturer sells Dealer a remanufactured engine for \$20,000 cash and a \$5,000 credit for the chassis' engine that the Dealer sent.

POSTN-143596-12

- Removes the chassis' transmission and sends it to a transmission remanufacturer. The transmission remanufacturer sells Dealer a remanufactured transmission for \$5,000 cash and a \$2,000 credit for the chassis' transmission that the Dealer sent.

- Purchases a glider kit for \$50,000.

- Purchases \$1,000 worth of other new components.

The dealer charges Owner \$12,000 for labor, fees, internal costs (including a share of overhead expenses) related to the labor involved, and other related charges.

The average pre-tax (retail and sales taxes) sales price (based on Dealer's sales) of a comparable new chassis is \$125,000.

Law

Section 4051(a)(1)(A) imposes a 12 percent excise tax on the first retail sale of a highway truck chassis suitable for use with a vehicle that has a gross vehicle weight in excess of 33,000 pounds.

Section 4052(a)(1) defines "first retail sale" as the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation.

Section 4052(a)(3)(A) provides that if any person uses an article taxable under § 4051 before the first retail sale of such article, then such person is liable for tax under § 4051 in the same manner as if such article were sold at retail by him.

Section 4052(a)(3)(C) provides that in the case of any person made liable for tax by § 4052(a)(3)(A), the tax is computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

For purposes of §§ 4051-4053, § 4052(b)(1) defines "price" as including any charge incident to placing the article in condition for use and excludes: (1) the § 4051 tax; (2) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee; and (3) the value of any component of the article if the component is furnished by the first user of the article, and the component has been used before the first user furnished it. Additionally, "price" is determined without regard to any trade-in.

Section 48.0-2(a)(4)(i) of the Manufacturers and Retailers Excise Tax Regulations defines "manufacturer" as a person who produces a taxable article from scrap, salvage, or junk material, as well as from new or raw material, (1) by processing, manipulating, or changing the form of an article, or (2) by combining or assembling two or more articles.

POSTN-143596-12

Section 48.0-2(a)(4)(ii) provides that if a person manufactures or produces a taxable article for another person that furnishes materials under an agreement whereby the person that furnished the materials retains title thereto and to the finished article, the person for whom the taxable article is manufactured or produced, and not the person that actually manufactures or produces it, will be considered the manufacturer.

Section 4052(f)(1) provides that an article taxed by § 4051(a)(1) is not treated as manufactured or produced solely by reason of repairs or modifications to the article (including any modification which changes the transportation function of the article or restores a wrecked article to a functional condition) if the cost of such repairs and modification does not exceed 75 percent of the retail price of a comparable new article. Therefore, a chassis is not considered “manufactured” if its repairs and modifications do not exceed 75 percent of the retail price of a comparable new article.

Questions

1. Is the renovated chassis subject to the retail excise tax imposed by § 4051(a)(1), taking into consideration § 4052(f)(1)?

Cost of Repairs and Modifications

Remanufactured engine	\$25,000
Remanufactured transmission	\$ 7,000
Glider kit	\$50,000
Other new components	\$ 1,000
Labor, fees, and other related charges	\$ 7,000
Internal costs (including a share of overhead expenses)	<u>\$ 5,000</u>
Total	\$95,000

Retail price (pre-tax) of a comparable new chassis	\$125,000
--	-----------

Dealer's cost of repairs and modifications to the chassis are \$95,000, which is more than \$93,750 (75 percent of \$125,000), the cost of a comparable new chassis. Therefore, § 4051(f) does not apply. Consequently, the chassis is subject to the tax imposed by § 4051(a)(1)(A).

2. What is the amount of the tax?

The tax is 12 percent of the price at which similar articles are sold at retail in the ordinary course of trade. See § 4052(a)(3)(C). In addition to the § 4052(b)(1)(B)(i) exclusion of the § 4051 tax, § 4052(b)(1)(B)(ii) mandates that any retail sales tax, if stated as a separate charge, also be excluded. Likewise, the price also excludes the value of the used rear axle assembly provided by Owner. See § 4052(b)(1)(B)(iii).

POSTN-143596-12

Retail price (pre-tax) of a comparable new chassis:	\$125,000
Value of used rear axle assembly provided by Owner	<\$5,000>
Tax base	\$120,000
Tax rate	12%
Tax amount	\$14,400

3. Who is liable for the tax?

Owner is liable for the tax when Owner uses the chassis before its first retail sale because Owner is the manufacturer. See § 48.0-2(a)(4)(ii) and § 4052(3)(A).

4. If the chassis were owned by Dealer, who would be liable for the tax?

Assuming Dealer does not use the chassis before its first retail sale, when Dealer makes the first retail sale of the chassis, Dealer would be liable for the retail excise tax on its sale of the chassis. This tax would be 12 percent of the amount for which the chassis is sold. See § 4051(a)(1)(A).

5. Would the amount of tax increase if the glider kit included a rear axle?

Yes, assuming the cost of a glider kit that includes a rear axle increases the cost of the repairs and modifications made to the chassis.

6. Would the answer change if the original engine and transmission were renovated and re-used?

The answer depends on the effect the cost of renovating the engine and transmission has on determining whether the 75 percent test in §4052(f)(1) is met.

7. How much of the chassis must be used for the 75 percent sale harbor to apply so as to not to lose its identity as discussed in Rev. Rul. 63-128, 1963-2 C.B. 476?

Rev. Rul. 63-128 does not apply to these facts under present law.

Situation 2

A heavy truck outfitter installs on a used chassis that was taxed under § 4051 on its first retail sale the following items: a rebuilt engine, a rebuilt transmission, a finished cab and hood, a complete interior, front axles and brakes, front suspension and steering, a chassis frame, fuel tanks, an electrical system, and an engine cooling system. The outfitter may rebuild the engines and transmissions or purchase rebuilt engines and

POSTN-143596-12

transmissions. The outfitter allows customers to choose an engine or provide an engine of their choice. The outfitter also allows customers to choose a combination of new chassis components.

Question

Is the first retail sale of the renovated chassis subject to the § 4051(a)(1) tax, taking into consideration § 4052(f)(1)?

If the costs of renovating the chassis does not exceed 75 percent of the retail price of a comparable chassis, the chassis is not subject to the § 4051(a)(1) tax.

Please call Celia Gabrysh at (202) 622-3130 if you have any further questions.